(1)

86-1243
NO.:

Supreme Court, U.S.
FILED
JAN 5 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

STONEY GENE GOLDEN,

Petitioner,

v.

CANDIE SHERRI GOLDEN,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE ARIZONA SUPREME COURT

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49pp

I

QUESTION PRESENTED

Whether the State of Arizona acted in violation of the Supremacy Clause under the United States Constitution in prosecuting the Petitioner on federal kidnapping charges without applying or considering the dictates of the Federal Parental Kidnapping Prevention Act, 28 U.S.C. Section 1738(A).

TABLE OF CONTENTS

	Page
Questions Presented.	I
Table of Authorities	II
Opinion Below.	1
Jurisdiction	2
Constitutional Provisions Involved . .	3
Statement of the Case.	4
Reasons for Granting the Writ.	17
Conclusion	35
Appendix A	A-1
Appendix B	A-8

TABLE OF AUTHORITIES

Cases

Boyd v. Boyd, 653 S.W. 2d 732 (Tenn. App. 1983). 23, 26, 32

Finney v. Finney, 619 S.W.2d 130 (Tenn. App.1981). 26, 27, 29

Hegler v. Hegler, 383 So.2d 1134 (Florida 1980) 33

Jackson v. Jackson, 390 So.2d 787 (Florida 1980) 34

Lodge 76, International Association of Machinists and Aerospace Workers v. Wisconsin Employment Relations Comm., 427 U.S. 132, 138, 139; 96 S.Ct. 2548, 2552; 49 L.Ed.2d 396 (1976). 19

Mitchell v. Mitchell, 437 So.2d 22 (Ala. Civ. App. 1982). 33, 35

Peterson v. Peterson, 464 A.2d 202 (Maine 1983) 33

Salisbury v. Salisbury, 657 S.W.2d 761 (Tenn. App. 1983). 30

Valles v. Brown, 639 P.2d 1181 (N.M. 1981) 33

Voninski v. Voninski, 661 S.W.2d 872, 876 (Tenn.App. 1982). 19, 25, 31

Zucarro v. Zucarro, 407 So.2d 389 (Florida 1981) 33

Other Authorities:

Florida Laws, 61.021 28

Florida Laws, 61.1306 28

Florida Laws, 61.1308 28

T.C.A. 36-4-104 24

T.C.A. 36-6-202 25

T.C.A. 36-6-203 26

T.C.A. 36-1302 25

T.C.A. 36-1303 27

Federal Parental Kidnapping Act, 28 U.S.C. 1738 . . . .4, 17-22, 25, 35-36

U.L.A. Sect. 3(a)(2)(i). 4, 27

U.S.C. Sect. 1257(3) 3

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Opinion Below

On June 11, 1986 a Memorandum Decision and Order was rendered by the Arizona Court of Appeals in the instant case, which is set forth in the Appendix herein, pages A-1 through A-7. A Petition for Review of this decision was

filed, however, on October 7, 1986, review was denied by Order of the Arizona Supreme Court, as set forth in the Appendix attached herein, page A-8.

Jurisdiction

The Petitioner herein seeks review of the decision in this matter rendered by the Arizona Court of Appeals and tacitly upheld by the Arizona Supreme Court in its denial of Petitioner's Petition for Review. In its determination, the Appellate Court found that the trial court's action in declining to exercise subject matter jurisdiction over the custody issue of the parties' minor child was proper. Similarly, it found that the Tennessee Divorce Decree should be accorded full faith and credit, and therefore, that the acts of Petitioner in removing the child from the State of Tennessee were

wrongful.

Such determinations, however, were made without regard to the implications of the Federal Parental Kidnapping Prevention Act, which had it been considered, would have mandated a different result, to-wit: that full faith and credit not be accorded to the Tennessee Divorce Decree which was jurisdictionally defective, and hence, in turn, that the removal of the child from Tennessee was not wrongful.

The Court's jurisdiction to review the decision of the Arizona Supreme Court by Writ of Certiorari is conferred by 28 U.S.C. Section 1257(3).

Constitutional Provisions Involved

1. Article VI, The Supremacy Clause of the Constitution of the United States.

> This Constitution and the Laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be

made, under the authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the contrary notwithstanding.

2. Other relevant federal statutes are:

28 U.S.C. Section 1738(A)
U.L.A. Section 3(a)(2)(i)

Statement of the Case

This Petition comes before this Court as a request to review an Order of the Arizona Supreme Court which denied Petitioner's request for review of a decision and opinion of the Arizona Court of Appeals.

STONEY GOLDEN is the natural father and CANDIE GOLDEN, a/k/a CANDIE TAYLOR, but referred to herein as CANDIE GOLDEN or MRS. GOLDEN, is the natural mother of CHASEY GOLDEN, a male child, born on December 28, 1979. STONEY GOLDEN and CANDIE GOLDEN were married in Tennessee

on September 12, 1979. On May 22, 1982, STONEY GOLDEN, CANDIE GOLDEN and CHASEY GOLDEN were residents and domiciliaries of the State of Florida where they had resided for approximately 10 months upon relocation from the State of Tennessee, along with STONEY's brother and parents.

On May 20, 1982, the elder Goldens, who had also moved the family jewelry business to Florida, made plans for a two day trip to Tennessee to finish up some of their business affairs there. With the permission and consent of both CANDIE and STONEY GOLDEN, the elder Goldens took CHASEY GOLDEN with them with the intent of returning within a few days. With the knowledge of both STONEY and CANDIE, the elder Goldens stopped for the night in Alabama to stay with relatives. In the middle of the night of May 20, 1982, CANDIE GOLDEN, without the knowledge or

consent of STONEY GOLDEN, fled from the State of Florida, stopped in Alabama, physically removed the child from the care of the elder Goldens and arrived in Tennessee.

On May 21, 1982, less than twenty-four hours after leaving Florida, CANDIE GOLDEN, who had been living in Florida for the preceding ten months, filed a Complaint for Divorce in Franklin County, Tennessee seeking custody of the minor child. Tennessee has a six month residency requirement. Florida would have had jurisdiction. The Tennessee Court records indicate that the Complaint admits STONEY GOLDEN was not a resident of Tennessee, but instead, a resident of Panama City, Florida. STONEY GOLDEN was sent a non-resident notice by certified return receipt mail. STONEY GOLDEN conferred with Florida counsel at the

time all of whom were either unwilling or unable to litigate the action once the action in Tennessee had commenced. Faced with that STONEY GOLDEN journeyed back to Tennessee for the sole purpose of defending in the divorce action and to obtain custody of his minor child.

While in Florida, STONEY GOLDEN, through counsel, obtained the sworn statements of four witnesses who testified as to the residence of CANDIE, STONEY and CHASEY GOLDEN in the State of Florida for the period of time immediately preceding the filing of the Petition for Divorce in Tennessee. In addition there was a notarized statement from STONEY GOLDEN's employer and other documents verifying STONEY GOLDEN's employment and CANDIE GOLDEN's employment in the State of Florida. Despite the lack of jurisdiction over

either STONEY or CANDIE GOLDEN, the Tennessee Court dissolved the marriage on August 20, 1982, and in so doing, awarded custody of the minor child to MRS. GOLDEN. The Decree itself makes no finding of jurisdiction of the Tennessee Court.

The entire divorce action was marked by unfairness and bias. The strongest example of this is the representation by Mr. Joe Bean of MRS. GOLDEN. On two previous occasions, Mr. Joe Bean had represented STONEY GOLDEN. Mr. Bean used information obtained from the confidential attorney-client relationship against MR. GOLDEN in the divorce action. Documents in this Court's file indicate that MR. GOLDEN complained about this unfairness, that MR. GOLDEN's counsel insisted that Mr. Bean withdraw, that Mr. Bean refused,

that the Judge knew about the conflict of interest but that nothing was done. Ultimately bar disciplinary proceedings were instituted against Mr. Bean; however, he died before a decision was reached.

During the time that CANDIE GOLDEN had custody of the minor child, MR. GOLDEN observed abuse and neglect of the minor child. This abuse occurred while the minor child was in the care of Lonnie Taylor and his other children. Lonnie Taylor is CANDIE GOLDEN's step-father. One of the step-brothers living in the home was retarded and abusive. At one point the minor child had been cut with a knife between toes on both feet. He had been held down while this occurred by the retarded step-brother. On numerous occasions, STONEY GOLDEN observed cuts and bruises on the child which the child

attributed to Lonnie Taylor and the step-brother.

STONEY GOLDEN did everything he could within the context of the system to get help for his child. The uncontradicted record indicated pleas of help from a Dr. Jones, MR. GOLDEN's congressman, the governor, a local judge (who then recused himself from the case for being a witness), the Hank Snow foundation, a doctor, the National Child Abuse Foundation and the local Human Services Department. All of the agencies, in responsive correspondence submitted at the hearing, referred MR. GOLDEN to the local Human Services Department. The Human Services Department sent a friend or acquaintance of MRS. GOLDEN's to investigate the situation and closed the case.

After completely exhausting his

resources in Franklin County, Tennessee and after realizing that the authorities would not take any action against Lonnie Taylor or CANDIE GOLDEN to protect the child and after realizing it would be impossible to get a fair hearing there, STONEY GOLDEN left the State of Tennessee in January of 1983.

Ultimately, Appellant arrived in the State of Arizona approximately two and one half years ago and has been here since that time.

In the meantime, on January 5, 1983, based solely on the Affidavit of CANDIE GOLDEN, Judge Floyd Don Davis issued an arrest warrant for MR. GOLDEN for kidnapping. This Judge had previously represented CANDIE GOLDEN in the divorce action which gave rise to the criminal proceedings herein.

On May 4, 1985, STONEY GOLDEN was

arrested in Arizona on the Tennessee arrest warrant and the minor child was placed in Child Protective Services custody here. MR. GOLDEN informed them of the history of abuse and provided them with some pictures. At that time, Mr. Gregory Hayes gave MR. GOLDEN until 5:00 P.M. on May 7, 1985 to obtain a Temporary Restraining Order.

At 4:51 P.M. on May 7, 1985, Judge Pro Tem Margaret Houghton of the Arizona Superior Court signed an Order restraining MRS. GOLDEN from taking custody of the child and granting temporary custody to MR. GOLDEN. Judge Houghton telephoned Child Protective Services. At that time, the child had not yet been released. MRS. GOLDEN and her attorney, Edward Linden, Lonnie Taylor and Child Protective Services received actual notice of the Order.

MRS. GOLDEN was informed that a hearing under Arizona law could be obtained within two days and that she could not take the child unless and until the Order was dissolved.

Between 5:00 P.M. - 6:00 P.M., before a hearing on the merits could be held, in knowing and willful contemptuous violation of the Arizona Order, Lonnie Taylor and CANDIE GOLDEN fled across state lines with the minor child by taxi-cab to Texas. MRS. GOLDEN advised her attorney, by telephone, that she would not return to the State of Arizona.

Ultimately, a Petition for Contempt was filed against CANDIE GOLDEN and Lonnie Taylor. Service of the Contempt Petition was effectively served on Mr. Linden. Service of the Contempt Petition on Mr. Taylor was effectuated. However, the attorney for MR. GOLDEN in Tennessee,

has to date refused to send the affidavit due to threats allegedly from the "D.A."

The evidence adduced at the domestic hearing indicated that in preparation for this hearing, witnesses and potential lawyers for Appellant had been threatened. The Sheriff of Franklin County had informed Appellant's parents that he could not guarantee STONEY GOLDEN's safety if he returned there.

At one point, MRS. GOLDEN and Lonnie Taylor posed as law enforcement officials in Dyer, Texas to effectuate an invalid warrant to bring back some of the Golden's relatives to Tennessee on Conspiracy to Kidnap charges. The Texas Sheriff recognized the imposters for what they were and ordered them out of his jurisdiction. Nevertheless, the Goldens' relatives had to appear in Tennessee and post bond on these charges in front of

the same judge issuing the warrant in this case.

Even before MR. GOLDEN was discovered in the State of Arizona, his attorney, Mr. Denty Cheatham, communicated with the County Attorney there about all of the problems that have been described in this hearing. He requested that a neutral forum be used to address the issues. The request was refused.

A hearing on whether the Temporary Restraining Order should be made permanent was heard by the Honorable Judge Pro Tem Raner Collins on May 17, 1985. On August 8, 1985, he ruled that Arizona did not have jurisdiction to grant custody in MR. GOLDEN. That ruling is on appeal with this Court. MR. GOLDEN was incarcerated on August 9,1985 for purposes of extradition to the State of

Tennessee on the charge of kidnapping as specified in the Tennessee arrest warrant. MR. GOLDEN was held without bond from August 9, 1985 to February 7, 1986. A Writ of Habeas Corpus was filed by MR. GOLDEN's attorneys on August 16, 1985. After a hearing on August 30, 1985, the Writ of Habeas was denied. A Notice of Appeal from the Denial of Writ of Habeas Corpus was filed on August 30, 1985. A Stay of Execution of the extradition proceedings was sought and obtained on September 3, 1985 pending appeal. A Motion for Bail was filed on November 27, 1985 by MR. GOLDEN's attorneys; that Motion was denied on January 9, 1986. Upon Stipulation and Order for release, MR. GOLDEN was released on bond pending exhaustion of his remedies on February 7, 1986.

MR. GOLDEN sought relief from

Denial of the Writ of Habeas Corpus by the trial judge on appeal. On May 22, 1986 the Arizona Court of Appeals rendered its opinion, denying relief to MR. GOLDEN.

A Petition for Review was filed with the Arizona Supreme Court which in turn denied review on October 5, 1986.

Reasons for Granting the Writ

The State of Arizona acted in violation of the Supremacy Clause under the United States Constitution in prosecuting the Petitioner on federal kidnapping charges without applying or considering the dictates of the Federal Parental Kidnapping Prevention Act, 28 U.S.C. Section 1738(A).

Article VI of the Constitution of the United States provides inter alia that the Constitution and Laws of the United States shall be the supreme law of

the land notwithstanding and State action to the contrary. Notwithstanding this fundamental principle, the Arizona courts failed to apply or even consider the dictates of the Federal Parental Kidnapping Prevention Act of 1980, hereinafter referred to as the "PKPA".

This Act interprets all decrees of every state entered after December 28, 1980. Since the Tennessee Decree was entered after December 28, 1980, the Tennessee Court had a duty to enter its Decree and custody order in accordance with the standards enacted in that Act.

That act establishes a policy of federal pre-emption in the area of custody jurisdiction:

> **1738(A) Full faith and credit given to child custody determinations**
>
> (a) The appropriate authorities of every State shall enforce according to its terms, and shall not modify

> except as provided in subsection 9f) of this section, any child custody determination made consistently with the provisions of this section by a court of another State.
>
> Even Tennessee recognizes this:
>
> "As a federal jurisdictional statute, the PKPA establishes a policy of federal pre-emption in the area of custody jurisdiction. Consequently, under the Supremacy Clause of the United States Constitution, the PKPA takes precedence over either the Tennessee of New York Law and must be first consulted in determining jurisdiction in custody disputes." See Lodge 76, International Association of Machinists and Aerospace Workers v. Wisconsin Employment Relations Commission, 427 U.S. 132, 138, 139, 96 S.Ct. 2548, 2552, 49 L.Ed.2d 396 (1976)... Voninski v. Voninski, 661 S.W.2d 872, 876 (Tenn.App. 1982).

28 U.S.C. Section 1738(A) provides that Arizona (and every other state) should enforce the custody decrees of other states if those decrees are rendered in accordance with the laws of the state rendering the order and the

standards defined in the federal act are met:

> (c) A child custody custody determination made by a court of a State is consistent with the provisions of this section only if--
>
> (1) such court has jurisdiction under the law of such State; and
> (2) one of the following conditions is met:
>
> (A) such State (i) is the home State of the child on the date of the commencement of the proceeding, or (ii) had been the child's home State within six months before the date of the commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a contestant continues to live in such State;
>
> B.(i) It appears that no other state would have jurisdiction under subparagraph (A), and (ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the child and at least one contestant, have a significant connection with this state other than mere physical presence in such State, and (II) there is available in this such state substantial evidence

concerning the child;s present or future care, protection, training and personal relationships.

C. The child is physically present in such state and (i) the child has been abandoned or (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse.

D. (i) It appears that no other state would have jurisdiction under subparagraph (A), (B), (C), or (E), or another state has declined to exercise jurisdiction on the ground that the state whose jurisdiction is in issue is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that this court assume jurisdiction; or

E. The court has continuing jurisdiction pursuant to subsection (d) of this section.

The PKPA defines "home state" as follows:

1738(A)(b)(4): "Home State: means the State in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months

> old, the State in which the child lived from birth with any of such persons. Periods of temporary absence of any of such persons are counted as part of the six-month or other period;

1. Tennessee did not have jurisdiction under its own laws to render the initial custody Decree because the parties had been residing in Florida for the previous 10 months and Florida would have been the only acceptable jurisdiction.

In this judicial maze, the federal act directs one straight back to state law since the first of the jurisdictional prerequisites of the PKPA is that the state court have jurisdiction under its own law.

An analysis of Tennessee statute and state law compels one conclusion: Franklin County was acting totally without jurisdiction when it accepted jurisdiction of the initial custody petition on May 22, 1982.

The facts constituting jurisdiction

must be determined on May 22, 1982, the date of filing the Petition, not the date of rendition of the custody decree. Boyd v. Boyd, 653 S.W.2d 732, 738 (Tenn. App. 1982). If there was no jurisdiction on that date, there can be no "bootstrapping" of jurisdiction by claiming that the child resided in Tennessee for six months after the Petition.

On May 22, 1982, CANDIE GOLDEN and CHASEY GOLDEN were within the State of Tennessee for only a few hours and without the permission or knowledge of STONEY GOLDEN. All three had lived, worked and owned an interest in the family jewelry store in Florida. Such Florida residence had been maintained for 10 months prior to May 22, 1982. Under these circumstances, Tennessee was compelled by its own law and statutes to

decline jurisdiction.

To even file a Petition for Dissolution of Marriage, one must have been a resident of the State of Tennessee for more than six months prior to the filing of the Petition:

> 36-4-104. Residence requirements (a) A divorce may be granted for any of the aforesaid causes if the acts complained of were committed while the plaintiff was a bona fide resident of this state or if the acts complained of were committed out of this state and the plaintiff resided out of the state at the time, if the plaintiff or the defendant has resided in this state six (6) months next preceding the filing of the complaint.

With respect to child custody, Tennessee at the time of the filing of the underlying Petition, and now, had in effect its own version of the Uniform Child Custody Act.

Tennessee, by its own interpretation of this statute, relied heavily on the "home state" of the child in determining

jurisdiction over custody disputes.

Tennessee defines "home state as follows:

> 36-6-202: (5) Home state means the state in which the child immediately preceding the time involved lived with his or her parents, a parent, or a person acting as parent, for at least six (6) consecutive months...

Tennessee itself acknowledges that Tennessee and the PKPA has established a clear preference for "home state" jurisdiction. See, Voninski v. Voninski, 661 S.W.2d 872 (Tenn. App. 1982):

> "We believe that the language of the Tennessee Act, like that of the PKPA, establishes a preference for home state jurisdiction in interstate custody disputes." Voninski, supra at page 878.

Further, Tennessee also acknowledges that the PKPA does not contemplate that jurisdiction may exist concurrently in a home state and a state with significant connections:

> The Act does not contemplate that jurisdiction may exist concurrently

> in a "home state" and a state with significant connections. If another state has satisfied the definition of "home state" set out at T.C.A. 36-1302(5), that state may assert jurisdiction to the exclusion of Tennessee even if Tennessee has significant connections and it is in the child's best interest that Tennessee courts assert such jurisdiction. Boyd v. Boyd, 653 S.W.2d 732 (Tenn. App. 1983) at page 737.

Indeed the Tennessee Act specifically allows the factors of the child and at least one contestant having a significant connection with the State and the best interests of the child to be significant only when no other state has jurisdiction. See the Tennessee Act, 36-6-203 (1)(2)(A)(B)(C)(D). In this respect it is like the PKPA. The Tennessee Court in Finney v. Finney, 619 S.W.2d 130 (Tenn. App.1981) made this clear when it stated:

> While the Tennessee Child Custody Act, as we have heretofore stated, is substantially similar to the

> Uniform Act, our legislature did not see fit to include language from the model act permitting jurisdiction when "it is in the best interests of the child that a court of this State assume jurisdiction because...the child and his parent,s, or the child and at least one contestant, have a significant connection with this State..." Uniform Child Custody Jurisdiction Act (U.L.A. Section 3(a)(2)(i)
>
> T.C.A. Section 36-1303 is the jurisdictional section of the Tennessee Child Custody Act, and, unlike the model Act, the best interest of the child is not a jurisdictional factor pursuant to T.C.A. Section 36-1303.
>
> While the child was physically present in Tennessee when the instant suit was filed, the proof is clear that Tennessee was not the child's "home state" when suit was filed." Finney, supra, 619 S.W.2d at pages 132-133.

Because of this, even the Tennessee courts acknowledge that the effect of the Tennessee Child Custody Act is to severely limit the ability of Tennessee courts to make custody dispositions. See, Finney, supra at page 132.

Florida, in its version of the Uniform Child Custody Act embraces the doctrine of jurisdiction in the "home state". Section 61.1306 states as follows:

> 61.1308 Jurisdiction:
>
> (1) A court of this state which is competent to decide child custody has jurisdiction to make a child custody determination by initial or modification decree if,
>
> (a) This state:
>
> (1) Is the home state of the child at the time of commencement of the proceeding.
>
> Home state is defined as follows:
>
> 61.1306 (5) "Home state" means the state in which the child, immediately preceding the action involved, lived with his parents, a parent, or a person acting as parent for at least six consecutive months...

Florida also has and had at the time a six month residency requirement for filing for divorce. (61.021 Florida Laws).

A brief synopses of some of Tennessee's own cases is very helpful in arriving at the conclusion requested by Petitioner in this case.

In Finney, supra, husband, wife and child all resided in Texas. In September of 1979, the wife and minor child traveled to Tennessee to visit the wife's grandmother who was dying. Thereafter in October of 1979, the wife filed for Divorce and custody of the minor child in the Tennessee Courts. Husband filed in Texas. A series of conflicting custody orders were entered by the two different courts. The issue on appeal was the failure of the Tennessee court to accord the Texas decree full faith and credit. The Tennessee Court of Appeals ruled that Tennessee did not have jurisdiction. Texas had jurisdiction because the parties had lived there at least six

months prior to the filing of the proceedings and it was therefore the home state.

Even though the wife's former home had been in Tennessee (like the present case), Tennessee declined jurisdiction where another state had the parties as residents for six months. Similarly in this case, Florida had the parties as residents for more than six months and Tennessee should have declined jurisdiction.

In Salisbury v. Salisbury, 657 S.W.2d 761 (Tenn. App. 1983) there were two conflicting custody orders from Tennessee and Texas. Tennessee had been the home state of the parties; however, wife moved to Texas in the middle of the proceedings and decided to accept jurisdiction because of the physical presence of the children there. The

Tennessee Court ruled that because the parties had lived in Tennessee 6 months prior to the initiation of the action, Tennessee had jurisdiction. Further, the wife had engaged in blatant forum shopping by moving to Texas.

Significantly, Tennessee also held that the husband could collaterally attack the Texas Decree in the Tennessee Courts even if the Texas decree was immune from collateral attack in the Texas Court.

In Voninski v. Voninski, supra, there was a New York divorce Decree giving wife custody of the minor children. She then moved to Tennessee and had been in Tennessee for more than six months at the time that husband filed for contempt in the New York Courts and she filed a Petition for modification in the Tennessee Courts. Relying heavily on home

state rule doctrine, Tennessee decided it had jurisdiction over the action.

In Boyd, supra, there was a Tennessee Decree vesting custody to mother. The mother then moved to New York and the father stayed in Tennessee. while the child was present in Tennessee for summer visitation in the summer, father filed a modification action and the Tennessee Court granted custody to the father. The Tennessee Court of Appeals held that the Davidson County Judge was wrong. Again, heavily relying no home state doctrine, the Tennessee Court of Appeals determined that New York had jurisdiction--not Tennessee.

In its reasoning the court recited sound reasons for the home state rule among them being discouragement of forum shopping and discouragement of snatching the child from one jurisdiction and

fleeing to another state without jurisdiction seeking solace of that court.

See also, Mitchell v. Mitchell, 437 So.2d 122 (Ala. Civ. App. 1982) [Almost exclusive jurisdiction is initially granted to the home state by the federal act]; Peterson v. Peterson, 464 A.2d 202 (Maine 1983) [No jurisdiction after one parent had only been there three days.]; Valles v. Brown, 639 P.2d 1181 (N.M. 1981) [Arizona custody decree invalid when Arizona rendered decree after mother lived there one month]; Zucarro v. Zucarro, 407 So.2d 389 (Florida, 1981) [No jurisdiction where party brought children to Florida from New York where mother and child had been residing notwithstanding that New York was three days shy of for its own residency requirement]; Hegler v. Hegler, 383 So.2d 1134 (Fla.1980) [No jurisdiction where mother and

child had been resident of Maryland for one and one half years even though the father was physically present in Florida with the child]; Jackson v. Jackson, 390 So.2d 787 (Florida, 1980) [Florida court declined jurisdiction over father and child in the state of Florida where the child had been a resident of Minnesota for fourteen months--citing home state rule].

In this case, MRS. GOLDEN engaged in blatant forum shopping when she left Florida in the dead of the night without consent or knowledge of MR. GOLDEN. In the stealth of the night she went to Alabama and removed the child from her in-laws--again without the knowledge of STONEY GOLDEN. She left her home, her domicile and the place of her livelihood to go back to a forum that she thought (and it most certainly was) very friendly

to her.

This is the heart of the PKPA. It is exactly the situation for which the Act was designed. If ever the protection of the Act should be invoked, it should be here. Tennessee itself recognizes this over and over again in its appellate cases. Indeed its appellate courts appear to constantly be correcting the actions of the local county judges, who for bias, or misunderstanding of the law or whatever other reason, fail to apply the strong and overriding principles of "home state jurisdiction."

Where a court renders a decree without comporting with federal law, it is not entitled to full faith and credit. See Mitchell v. Mitchell, supra at page 125.

Conclusion

The Arizona courts' independent

actions in failing to consider the dictates of the Federal Parental Kidnapping Prevention Act contradicts and violates the fundamental principles embodied in the Supremacy Clause of the United States Constitution which would allow Arizona to assume subject matter jurisdiction. For this reason, Petitioner requests that this Court issue a Writ of Certiorari to review the decision of the Arizona Supreme Court.

Respectfully submitted,

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APPENDIX A

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

2 CA-CIV 5641
DEPARTMENT B

PIMA County
Superior Court
Cause No. D-55204

STONEY GENE GOLDEN	)	
	)	
Plaintiff/Appellant,	)	
	)	
v.	)	
	)	
	)	ORDER
CANDIE SHERRI GOLDEN,	)	
	)	
Defendant/Appellee.	)	
	)	

The above-entitled matter was duly submitted to the Court. The Court has this day rendered its MEMORANDUM DECISION.

IT IS ORDERED that the MEMORANDUM DECISION be filed by the Court.

IT IS FURTHER ORDERED that a copy of this order together with a copy of the MEMORANDUM DECISION be sent to each party appearing herein or the attorney for such party and to the Honorable Raner C. Collins, Judge Pro-Tempore and Honorable Thomas Meehan, Presiding Judge, Pima County Superior court.

DATEd this 11th day of June, 1986.

_____
Joseph M. Livermore
Presiding Judge

The foregoing directives were complied with June 11, 1986 by mailing the required to:

LAW OFFICE OF KATHLEEN MCCARTHY
124 West Cushing Street
Tucson, Arizona 85701

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

STONEY GENE GOLDEN,	)
	) 2 CA-CIV 5641
Plaintiff/Appellant	)Department B
	)
v.	)
	) MEMORANDUM
CANDIE SHERRI GOLDEN,	) DECISION
	) Not for
	) Publication
Defendant/Appellee.	) Rule 28(a)(2),
	) Rules of Civil
	) Appellate
	) Procedure

APPEAL FROM THE SUPERIOR COURT OF
PIMA COUNTY

Cause No. D-55204

Honorable Raner C. Collins,
Judge Pro Tempore

AFFIRMED

LAW OFFICE OF KATHLEEN A MCCARTHY Tucson
By Kathleen McCarthy

Attorneys for Plaintiff/Appellant

L A C A G N I N A, Judge.

Stoney Golden appeals the trial court's amended order which dismissed his petitioner for custody modification and declined to exercise jurisdiction concerning the custody of his minor child. The order of the court included extensive findings of fact and conclusions of law. Golden argues that Arizona has jurisdiction to grant his custody of his minor child and that the Tennessee divorce decree should not be given full faith and credit. we agree with the trial court's order and affirm.

Golden presented all the evidence at the hearing. The trial court concluded that the Tennessee court had jurisdiction to enter the decree, that Arizona statutes allowed the court discretion in declining to exercise jurisdiction, and that the

proper forum for his petition for custody modification is Tennessee.

Golden conceded the trial court could refuse to accept jurisdiction if it found he had acted wrongfully. In dismissing this petition, the court concluded that "jurisdiction ha(d) been determined previously by a Tennessee court and furthermore that the actions of Petitioner were wrongful when he removed the child from the State of Tennessee with no legal right to do so."

The trial court's findings are conclusive and binding on this court unless they are clearly erroneous or unsupported by any credible evidence in the record. Rule 52(a), Rules of Civil Procedure, 16 A.R.S.; Donahue v. Marston,

26 Ariz.App. 187, 547 P.2d 39 (1976); Wilson v. Tucson General Hospital, 18 Ariz.App. 31, 499 F.2d 762 (1972); Bevins v. Dickson Electronics Corp., 16 Ariz.App. 105, 491 P.2d 494 (1972); Marquess v. Spaner, 15 Ariz.App. 342, 488 P.2d 698 (1971). The court's findings are supported by undisputed evidence, and we find it acted within the discretion in declining to exercise jurisdiction.

Affirmed.

MICHAEL A. LACAGNINA, Judge

CONCURRING:

BEN C. BIRDSALL, Judge

JOSEPH K. LIVERMORE,
Presiding Judge

APPENDIX B

SUPREME COURT

October 8, 1986

RE: STONEY GENE GOLDEN vs. CANDIE SHERRI GOLDEN
Supreme Court No. CV-86-0422-PR
Court of Appeals No. 2 CA-VIC 5641
Pima County No. D-55204

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on October 7, 1986, in regard to the above-referenced cause:

ORDERED: Petition for Review - DENIED.

Record returned to the Court of Appeals, Division Two, Tucson, this 8th day of October, 1986.

DAVID R. COLE, Clerk

TO:

Kathleen McCarthy, Esq.
Salese & McCarthy
Ms. Candie Pendleton (Golden)
Joyce Goldsmith, Clerk,
Court of Appeals, Division Two

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